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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

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In re L.N. et al., Persons Coming Under  
the Juvenile Court Law.

SAN JOAQUIN COUNTY HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

E.N.,

Defendant and Appellant.

C060626

(Super. Ct. No.  
J03432)

Appellant E.N., the father of L.N., C.N., and J.N. (the minors), appeals from an order of the juvenile court terminating his parental rights. (Welf. & Inst. Code, §§ 366.26, 395; undesignated references are to the Welfare and Institutions Code.)

On appeal, appellant contends there was a failure to comply with the notice provisions of the Indian Child Welfare Act (25

U.S.C. § 1901 et seq. (ICWA).) We vacate the order terminating parental rights and remand for proper notice.

#### BACKGROUND

In March 2004, the San Joaquin County Human Services Agency (HSA) filed a dependency petition on behalf of the seven-year-old L.N., five-year-old C.N., and I.M.<sup>1</sup> The mother, C.A., had left the minors with the maternal grandmother, a known heroin addict, and her sister, both of whom were arrested after the police saw them injecting heroin. The mother was later arrested on an outstanding warrant when she returned home. Appellant was incarcerated at the time, and the mother had a history of drug use, a prior criminal record, and 10 previous child welfare referrals. The minors were detained and placed with the paternal grandmother.

The mother told HSA that the maternal great-grandmother was 100 percent Sioux. In May 2004, HSA sent ICWA notices to the 16 Sioux tribes and the Bureau of Indian Affairs (BIA).<sup>2</sup> HSA received negative responses from the BIA and the following

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<sup>1</sup> Appellant is not the father of I.M. I.M.'s father is not a party to this appeal.

<sup>2</sup> HSA sent notices to the following tribes: the Flandreau Santee Sioux, Cheyenne River Sioux, Crow Creek Sioux, Fort Peck Tribal Executive Board, Santee Sioux Tribe of Nebraska, Shakopee Sioux Business Council, Sisseton-Wahpeton Sioux Tribe, Spirit Lake Sioux, Upper Sioux Board of Trustees, Yankton Sioux Tribal Business and Claims Committee, Rosebud Sioux Tribal Council, Oglala Sioux, Lower Sioux Indian Community of Minnesota, Lower Brule Sioux Tribal Council, Prairie Island Community Council, and the Standing Rock Sioux Tribe.

tribes: the Flandreau Santee Sioux Tribe, Prairie Island Indian Community, Santee Sioux Nation, Spirit Lake Tribe, Lower Brule Sioux Tribe, Shakopee Mdewakanton Sioux Community, Rosebud Sioux Tribal "Sicangu Nation," Crow Creek Sioux Tribe, Cheyenne River Sioux Tribe, and the Sisseton-Wahpeton Sioux Tribe. No responses were received from the other notified tribes.

The minors were placed with the mother in July 2004, and the dependency was dismissed without prejudice in April 2005.

A new petition was filed in December 2005, alleging jurisdiction under section 300, subdivisions (b) and (g) on behalf of the four-month-old J.N., I.M., and the other minors. The petition was filed after the mother, maternal grandmother, and maternal step-grandfather were arrested when a parole search of the mother's apartment uncovered drugs and syringes within the minors' reach. Appellant was still incarcerated, and the mother reiterated her Sioux heritage.

The juvenile court sustained the petition in January 2006, making no mention of the ICWA. In April 2006, the juvenile court found the minors were not Indian children based on the notices in the prior dependency action. The juvenile court extended services to the mother and denied services to appellant in the June 2006 dispositional hearing.

The juvenile court continued reunification services and placed J.N. with the mother in September 2006. The remaining children were returned to the mother in February 2007. By August 2007, HSA recommended dismissal as the mother had completed her case plan.

HSA filed a section 387 supplemental petition in October 2007 after the mother twice tested positive for methamphetamine and her landlord initiated eviction proceedings. The mother subsequently absconded with the minors, leading the juvenile court to issue a bench warrant. The minors were located in Las Vegas and flown back to California in December 2007.

The juvenile court terminated reunification services in March 2008, and terminated parental rights in December 2008. Appellant had now been sentenced to life in prison.

#### DISCUSSION

Appellant's sole contention is the ICWA notice is insufficient for the Sioux tribes which never sent a negative response. We find HSA sent insufficient notice to six tribes.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912.) To facilitate participation, notice of the pending proceeding and the right to intervene must be sent to the tribe or to the BIA if the tribal affiliation is not known. (25 U.S.C. § 1912(a); § 224.2, subd. (a).) Once notice is provided, it must be sent for each subsequent hearing until it is determined that the ICWA does not apply. (§ 224.2, subd. (b); *In re Marinna J.* (2001) 90 Cal.App.4th 731, 736.)

Appellant claims eight of the notified tribes -- the Fort Peck Tribal Executive Board, Upper Sioux Board of Trustees,

Yankton Sioux Tribal Business and Claims Committee, Rosebud Sioux Tribal Council, Oglala Sioux, Lower Sioux Indian Community of Minnesota, Crow Creek Sioux, and the Standing Rock Sioux Tribe -- never replied to the ICWA notice in the 2004 dependency action, and these notices contained errors.

None of the eight notices were addressed to the tribal chairman or the designated ICWA representative for the tribe listed in the Federal Register. (68 Fed.Reg. 68416-68417, 68420 (Dec. 8, 2003).) Three of the notices also had incorrect addresses. The notices to the Oglala Sioux and Standing Rock Sioux Tribe were addressed to the wrong post office box, and the address for the Rosebud Sioux Tribal Council had the wrong city, post office box, and zip code. (68 Fed.Reg. 68416 (Dec. 8, 2003).) Finally, most of the notices contained incorrect tribal names. With the exception of the Standing Rock Sioux Tribe and Lower Sioux Indian Community of Minnesota, each of the tribal names in the notices varied from the tribe's name in the Federal Register.<sup>3</sup> (68 Fed.Reg. 68416-68417, 68420 (Dec. 8, 2003).)

"A tribe entitled to notice under ICWA may designate an agent for service of notice other than the tribal chairman, and

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<sup>3</sup> The Fort Peck Tribal Executive Board is listed in the Federal Register as the Assiniboine and Sioux Tribes of the Fort Peck Reservation of Montana, the Upper Sioux Board of Trustees is the Upper Sioux Community of Minnesota, the Yankton Sioux Tribal Business and Claims Committee is the Yankton Sioux Tribe, the Rosebud Sioux Tribal Council is the Rosebud Sioux Tribe, the Oglala Sioux is the Oglala Sioux Tribe, and the Crow Creek Sioux is the Crow Creek Sioux Tribe. (68 Fed.Reg. 68416-68417, 68420 (Dec. 8, 2003).)

the current names and addresses of designated agents for service of notice are contained in the Federal Register. [Citations.]” (*Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779, 783 (*Nicole K.*)). Notice sent to the wrong address or to someone other than the designated tribal representative does not comply with the ICWA. (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1201 (*Alice M.*)).

Errors in ICWA notice are harmless when the tribe or tribes have actual notice of the dependency proceedings and either intervene or expressly indicate no interest in intervening. (*Nicole K.*, *supra*, 146 Cal.App.4th at pp. 783-784; *In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1424.) In order for an incorrectly addressed notice to be harmless error, the record must contain “conclusive evidence” that the tribe was actually notified. (*Nicole K.*, *supra*, 146 Cal.App.4th at p. 784.)

HSA contends the failure to address the notices to the designated representatives is harmless because it received return receipts from each of the tribes. None of the return receipts were signed by the tribal representative designated in the Federal Register. (68 Fed.Reg. 68416-68417, 68420 (Dec. 8, 2003).) When notice is sent to the wrong address or someone other than the designated representative, a signed return receipt notice does not render the error harmless absent “any evidence that the signature was that of a ‘representative of the [tribe]’ . . . .” (*Nicole K.*, *supra*, 146 Cal.App.4th at p. 784; accord, *Alice M.*, *supra*, 161 Cal.App.4th at p. 1201.)

HSA did receive a copy of a letter from the Rosebud Sioux Tribal "Sicangu Nation" that was sent to the ICWA specialist for the tribe, stating that the minors were neither members of the tribe nor eligible for enrollment. The letter was sent by Caroline Horse Looking at Box 335, Rosebud, SD 58570, to Shirley Big Eagle, ICWA Specialist, at P.O. Box 609, Mission, SD 57555-0609. Neither address match the address for notice sent by HSA to the Rosebud Tribe. Neither match the address of the designated tribal representative for the Rosebud Tribe in the 2003 Federal Register. (68 Fed.Reg. 68416 (Dec. 8, 2003).) However, the letter from the Rosebud Tribe does correspond to the address and ICWA representative for the Rosebud Tribe in a subsequent Federal Register. (71 Fed.Reg. 43799 (Aug. 2, 2006).) We conclude that errors in the notice to the Rosebud Tribe are harmless, since the record shows that the tribe was notified and gave a negative response.

HSA also received a letter from the Crow Creek Sioux Tribe stating that the minors were neither members of the tribe nor eligible for membership. The letter was sent by David Valandra at P.O. Box 50, Fort Thompson, SD 57339, which matches the address for notice sent by HSA to the Crow Creek Sioux, and the address for the Crow Creek Sioux Tribe in the 2003 Federal Register. Mr. Valandra, however, is not listed in the 2003 Federal Register as the designated tribal representative for the Crow Creek Sioux Tribe. (68 Fed.Reg. 68416 (Dec. 8, 2003).) However, a subsequent Federal Register lists Mr. Valandra as the ICWA Director for the Crow Creek Sioux Tribe. (71 Fed.Reg.

43798 (Aug. 2, 2006).) We conclude that errors in the notice to the Crow Creek Sioux Tribe are harmless, since the record shows that the tribe was notified and gave a negative response.

HSA also argues that errors in the notice to the remaining tribes are harmless because the BIA was notified and sent a negative response. Notice to the BIA is inadequate for notice to the federally recognized tribes. (*Alice M., supra*, 161 Cal.App.4th at p. 1202.)

Accordingly, we conclude the notices to the Assiniboiné and Sioux Tribes of the Fort Peck Reservation of Montana, the Upper Sioux Community of Minnesota, the Yankton Sioux Tribe, the Oglala Sioux Tribe, Standing Rock Sioux Tribe, and the Lower Sioux Indian Community of Minnesota were inadequate. We reverse the order terminating parental rights and remand for the purpose of complying with the ICWA as to these tribes.

#### DISPOSITION

The order terminating parental rights is vacated, and the matter is remanded to the juvenile court with directions to order the San Joaquin County Human Services Agency to comply with the notice provisions of the Indian Child Welfare Act as outlined in this opinion. If, after proper and complete notice, a tribe determines that one or more of the minors is an Indian child as defined by the Indian Child Welfare Act, the juvenile court is ordered to conduct a new Welfare and Institutions Code section 366.26 hearing in conformity with all provisions of the Indian Child Welfare Act. If, on the other hand, no response is



received or the tribes determine the minor is not an Indian child, all previous findings and orders shall be reinstated.

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NICHOLSON, J.

We concur:

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SIMS, Acting P. J.

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CANTIL-SAKAUYE, J.